

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHELTON BEAMAN,

Plaintiff,

-v.-

L. GOODWIN,

Defendant.

No objections having been filed, and the Court having determined there is no clear error in the Report and Recommendation, the Court adopts Magistrate Judge Gorenstein's recommendation. The case is dismissed on the grounds that it has been abandoned, without prejudice. The Clerk of Court is directed to close the case. Pursuant to 28 U.S.C 1915(a), I find that any appeal from this order would not be taken in good faith. So Ordered. Copies Mailed By Chambers.



09/30/13

Paul A. Crotty, U.S.D.J

: REPORT AND RECOMMENDATION

: 12 Civ. 5680 (PAC) (GWG)

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USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>September 30, 2013</u>
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GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

The complaint in this matter was filed on July 20, 2012. On January 3, 2013, Judge Paul A. Crotty ordered that a summons be issued and that plaintiff effectuate service within 120 days of the issuance of the summons. Order of Service, filed Jan. 3, 2013 (Docket # 7). Judge Crotty warned that the case may be dismissed if plaintiff either failed to served the defendant or failed to request an extension of time to do so. Id. On January 18, 2013, the Clerk of Court sent plaintiff a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") and instructions for completing the form. See Docket Entry, dated Jan. 18, 2013. As of April 5, 2013, plaintiff had not returned this form to the Court in accordance with the instructions. Accordingly, the undersigned issued an Order on that date informing plaintiff that by May 6, 2013, he must either send to the Clerk a complete USM-285 form or send a letter requesting that a summons be sent to him in order to arrange for service on his own. Order, filed Apr. 5, 2013 (Docket # 9), at 1. If plaintiff complied with this deadline, the Court would extend the time for service to 120 days from receipt of the form or letter. Id. at 1-2. This Order specifically informed plaintiff that his case could be dismissed if he failed to comply with these directives.

Id. at 2.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

The 120-day period permitted under Rule 4(m) has expired. To date, there has been no proof of service filed with respect to the defendant in this matter. Nor has there been an application for an extension of time that shows good cause for such failure. The Clerk reports that plaintiff has sent neither a completed USM-285 form nor a letter requesting a summons be sent to him to arrange for service on his own. Similarly, the U.S. Marshals Service has informed the Court that it has no record of plaintiff requesting that it effectuate service.

For these reasons, and because this is not a case in which the Court should exercise its discretion to grant an extension in the absence of good cause, see Zapata v. City of N.Y., 502 F.3d 192 (2d Cir. 2007), cert. denied, 552 U.S. 1243 (2008), this matter should be dismissed without prejudice pursuant to Rule 4(m).

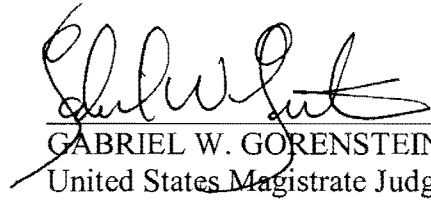
**PROCEDURE FOR FILING OBJECTIONS TO THIS
REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have fourteen (14) days including weekends and holidays from service of this Report and Recommendation to serve and file any objections. See also Fed. R. Civ. P. 6(a), (b), (d). Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with copies sent to the Hon. Paul A. Crotty, and to the undersigned, at 500 Pearl Street, New York, New York 10007. Any request for an extension of time to file objections must be

directed to Judge Crotty. If a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal. See Thomas v. Arn, 474 U.S. 140 (1985); Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir. 2010).

SO ORDERED.

Dated: June 6, 2013
New York, New York


GABRIEL W. GORENSTEIN
United States Magistrate Judge

Copy to:

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